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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,189	02/25/2004	Sehyun Kim	47003.010004	2389

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EXAMINER	
NUTTER, NATHAN M	

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/786,189	KIM, SEHYUN	
	Examiner	Art Unit	
	Nathan M. Nutter	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06-06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

In view of the arguments presented in the paper filed 12 July 2006, the following is placed in effect.

The rejection of claims 1-5 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lin et al (US 2003/0088022),is hereby expressly withdrawn.

Other rejections of record are being maintained, as follows.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 6 of copending Application No. 10/844,640. Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositional limitations of the application embrace those with regard to the polymers and their monomeric constituents. Further, the xylene solubles content of the homopolymer embrace those as recited herein. The copending application at claim 6 shows the in-reactor blending, as recited in instant claim 3.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yunoki et al (US 6,639,018).

The patent to Yunoki et al (US 6,639,018) teaches the manufacture of a blend of a propylene homopolymer (component polymer (B) in the reference), which may have a level of extractable material, "CXS" that at Table 1 at column 10 is "less than 3 wt %." The reference shows a propylene copolymer that may include "preferably up to 3.0% by weight" of ethylene monomer. The Abstract and column 2 (lines 35-61) show the two components to have compositional limitations that overlap with those recited and claimed herein. The blend may be in-reactor (claim 3), at column 5 (lines 12-23). Since stereoregular catalysts are taught for inclusion at column 6 (lines 28-32), the homopolmers would be expected to be crystalline. Additives may be employed at column 5 (lines 59-64) (claim 4).

Where the constituents overlap in compositional limitations, the claims are deemed to be anticipated by the reference. Since all other parameters are essentially identical, the recitations of the instant claims are deemed to be at least obvious, if not anticipated, by the reference to Yunoki et al (US 6,639,018).

Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fujita et al (US 6,346,580).

The patent to Fujita et al (US 6,346,580) teaches the manufacture of a propylene resin blend composition that may include a propylene homopolymer (designated polymer (B-1) in the patent) with a random ethylene-propylene copolymer (designated polymer (B-2) in the patent) that may overlap in compositional limitations with those recited and claimed herein. Note column 7 (lines 32-45) and column 8 (lines 14-26). The homopolymer is disclosed as crystalline having a xylene extractable of "0.10% by weight" at the Reference Example 6. That example also shows an ethylene monomer content for the ethylene-propylene block as being "4.7% by weight." The employment of a filler material or other additive is shown at column 9 (lines 39-46) (claim 4).

Where the constituents overlap in compositional limitations, the claims are deemed to be anticipated by the reference. Since all other parameters are essentially identical, the recitations of the instant claims are deemed to be at least obvious, if not anticipated, by the reference to Fujita et al (US 6,346,580).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dang et al (US 6,225,411).

The reference to Dang et al (US 6,225,411) teaches the manufacture of a propylene polymer blend that may comprise an isotactic (crystalline) propylene homopolymer with a propylene-ethylene copolymer that may comprise ethylene in an amount of "10% or less," which embraces the recitations of the instant claims. Note column 1 (line 55) to column 2 (line 11). At column 2 (lines 12-15), the reference shows the use of additives as recited in claim 4. The blend may be "in-reactor" (claim 3) at

column 2 (lines 48-55). The compositional limitations are exemplified at Table 1 of column 5 and are deemed to embrace those recited and claimed.

The reference is silent with respect to the xylene solubles portion of the propylene homopolymer constituent, teaching how those values may be obtained at column 4 (lines 18-34). However, the reference shows production of the resins in identical fashion as herein disclosed. As such, one would not expect there to be any difference in the characteristics of the resins employed. As such, since all other parameters are essentially identical, the recitations of the instant claims are deemed to be at least obvious, if not anticipated, by the reference to Dang et al (US 6,225,411).

Response to Arguments

Applicant's arguments filed 12 July 2006 have been fully considered but they are not persuasive.

With regard to the provisional rejection of claims 1 and 3-5 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 6 of copending Application No. 10/844,640, no Terminal Disclaimer has been filed in this application to overcome this rejection.

With regard to the rejection of claims 1-5 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yunoki et al (US 6,639,018), applicants assert that there is "no specific guidance regarding the content of xylene solubles in either of polymer A or B when those polymers are polypropylene homopolymers," and then admits that "Table 1 of Yunoki does disclose several

polypropylene homopolymers having xylene solubles of less than 3 percent." The Table shows for the B polymers a CXS of "less than 3 wt. %," as herein claimed. applicants, further, contend that "Yunoki contains no specific guidance on combinations of homopolymers with random copolymers of ethylene and propylene," yet the reference is specific to inclusion of random copolymers of propylene with ethylene at column 3 (lines 1-4). It is pointed out to applicants that a reference is not limited to the teachings contained only in the examples, but in the entirety of the reference. Further, the invention taught by Yunioki et al is sufficiently disclosed as to anticipate the instant claims at the points where the compositional limitations overlap with those recited and claimed herein. Applicants have not explained why this wouldn't be so. The ranges, as disclosed, do not present any "considerable differences," alleged, from those claimed herein. The reference teaches what is recited and claimed herein, as pointed out in the above rejection thereto. To include the homopolymer that is disclosed as component B in the reference with a random copolymer is shown. To choose one as a homopolymer and the other as a copolymer would certainly be obvious. The choice of one as a homopolymer and the other as a copolymer, is taught as within the concept of the reference, as well. To employ homopolymers having the CXS values as shown in Table 1 is shown. Otherwise, such a choice would be obvious to a skilled artisan.

With regard to the rejection of claims 1-5 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fujita et al (US 6,346,580), it is pointed out that the reference teaches the physical mixing of components A and B at column 9 (lines 32-46). This is echoed at Reference Example 6,

column 13, for the production of the B-1 component. The reference teaches the production of A and the production of B with subsequent blending. When the polymer B component is made, it is deemed, at that point to anticipate, or at least render obvious, the instantly claimed invention.

With regard to the rejection of claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over Dang et al (US 6,225,411), it is pointed out that if the isotactic index is as low as 90, it could be as high as 100, making the xylene soluble content, as low as 0.0 wt %, by applicants' own calculations. Applicants are reminded that a reference is taken for the entirety of its teachings, and not solely for that taught in the reference Examples. Where the compositional limitations overlap with those recited herein, the reference is deemed to anticipate the claims. Otherwise, a skilled artisan would know what polymers would be suitable from the disclosure of Dang et al and have a great expectation of success to provide the composition as herein claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

4 September 2006